

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

Met, pursuant to notice, at 10:00 a.m.  
BEFORE: Mr. John Albers, Examiner

MR. GREGORY HILL  
Hughes, Hill & Tenney  
160 East Main Street  
Decatur, Illinois 62525  
(Appearing on behalf of Illinois Power  
Company, via teleconference)

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By Julie L. Bloome, Reporter  
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1 P R O C E E D I N G S

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3 EXAMINER ALBERS: By the  
4 authority vested in me by the Illinois Commerce  
5 Commission, I now call Docket 00-0382. Illinois Power  
6 Company initiated this docket by filing a complaint  
7 against M.J.M. Electric Cooperative, Inc., under the  
8 Illinois Electric Supplier Act.

9 May I have the appearances for the  
10 record?

11 MR. HILL: On behalf of Illinois  
12 Power Company, attorney Greg Hill, Hughes, Hill &  
13 Tenney, my phone number is (217) 428-5383, and my  
14 address is 160 East Main Street, Suite 200, Decatur,  
15 Illinois 62525.

16 MR. TICE: Jerry Tice, attorney  
17 at law, 101 East Douglas, Petersburg, Illinois 62675,  
18 appearing on behalf of M.J.M. Electric Cooperative,  
19 Incorporated, and my phone number is (217) 632-2283.

20 EXAMINER ALBERS: Thank you.  
21 Let the record reflect there are no others wishing to  
22 enter an appearance. I don't believe there's any

1 preliminary matters. Since our last meeting, I have  
2 received the answer to the affirmative defenses from  
3 IP, as well as a motion to dismiss. Both of those  
4 were filed on September 13th. Through some telephone  
5 conversations with Mr. Tice, he's indicated that  
6 M.J.M. does not want to dismiss this proceeding. Is  
7 that still correct?

8 MR. TICE: That's correct, Mr.  
9 Examiner.

10 EXAMINER ALBERS: Mr. Hill, do  
11 you have any comment or response to that?

12 MR. HILL: The only comment I  
13 have, Mr. Examiner, is that I believe that the  
14 Petitioner has the right to dismiss the docket. If  
15 Mr. Tice's client cares to file a counterclaim, he can  
16 simply do that in another docket or in this docket and  
17 then he assumes the burden of proof at that point, but  
18 since IP desires to dismiss it, I think they have that  
19 right to do so.

20 EXAMINER ALBERS: I don't  
21 necessarily disagree with you. Given that this issue  
22 has come up, however, if M.J.M. would like to brief

1       this question, I'd be happy to hear any arguments on  
2       M.J.M.'s ability to prevent IP from dismissing their  
3       own complaint.

4                     Mr. Tice, would you like to pursue that?

5                     MR. TICE: Well, I haven't  
6       looked at the rules of the Commission specific on that  
7       point. We would be willing to brief it if the  
8       Examiner feels that that's necessary. We also will  
9       file a counterclaim in this matter, so the  
10      counterclaim's going to be at issue.

11                    EXAMINER ALBERS: Okay.

12                    MR. TICE: I mean, the  
13      counterclaim's going to basically bring the issues  
14      back up. I think probably a briefing of the motion to  
15      dismiss is maybe academic only, but my understanding  
16      is, generally, that the Civil Practice Act is not  
17      applied to the Commission proceedings. The rules, of  
18      course, of the Commission do apply, and there may be  
19      occasions when the Commission can go to the Civil  
20      Practice Act for guidance, but they're not per se  
21      applicable, and I think under the Civil Practice Act,  
22      there is a right of a party litigant or plaintiff to

1 voluntarily not suit their case, if they choose to do  
2 that. However, I'm not sure that that's actually  
3 going to be the rule in this case or would be the rule  
4 in this case, because this is a matter which has been  
5 brought to the Commission's attention. It is a  
6 dispute between the parties. The counterclaim of  
7 M.J.M. will reflect that nature of that dispute. It  
8 can be very similar to the complaint that's been filed  
9 by IP in the sense it will raise the same issues.

10 EXAMINER ALBERS: Is there any  
11 reason that this docket cannot be dismissed pursuant  
12 to IP's motion and M.J.M. can't bring its claims in  
13 another complaint docket?

14 MR. TICE: Well, I don't think  
15 it gives the correct reflection of the issues. I  
16 mean, this is an issue that's been brought before the  
17 Commission by IP. Now, maybe if IP wants to dismiss  
18 it, maybe IP deems to have waived everything here. I  
19 don't know... I mean, that's another issue here.

20 MR. HILL: I don't think we've  
21 waived anything. We have an answer to the affirmative  
22 defenses on file.

1                   MR. TICE: Well, but if you  
2     dismiss the claim...It's just a question I raise,  
3     Greg. I would think it would be better to have them  
4     all taken care of in the same proceeding, but yes, I  
5     mean, the Commission, of course, can do -- if that's  
6     the way the Examiner and the Commission choose to  
7     handle it, they of course can do that. There will be  
8     another docket reopened when M.J.M. files its  
9     counterclaim with respect to those customers that have  
10    been -- the issues have been raised as to.

11                  EXAMINER ALBERS: Well, you talk  
12    about raising the same issues in your counterclaim.  
13    So far, based on the limited pleadings that have been  
14    filed, the only issue that I can discern is where the  
15    boundary line is between IP and M.J.M. with regard to  
16    ten particular customers, and correct me if I am  
17    wrong, but I don't think there is much more that's  
18    been presented beyond that; is that correct?

19                  MR. TICE: No. Well, there is  
20    the issue of not only where the boundary line is, but  
21    there's an issue of whether or not M.J.M. or IP are  
22    entitled to serve these ten customers, and actually

1       there's more customers out there in this sort of  
2       no-man's-land. IP didn't raise all of them, didn't  
3       raise an issue as to all of them, but there's an issue  
4       of whether or not M.J.M. is the authorized supplier,  
5       because, in fact, what's happened with the complaint  
6       filed by IP is that they've said, no, you're not the  
7       appropriate supplier for these people, M.J.M., IP is,  
8       and these -- a lot of these are sort of like ghosts  
9       out of the past, so to speak, except for -- I think  
10      all of them, except for four of them, are ten  
11      years -- more than ten years has passed since they  
12      were connected to electric service, one of the  
13      remaining four was one released by IP to M.J.M., and  
14      then M.J.M. connected them, so there's only three of  
15      them within the ten years. And I refer -- so there's  
16      that issue. I mean, even if the Commission didn't  
17      decide the issue of where the boundary line is, there  
18      would still be always this issue out there of, well,  
19      is M.J.M. supposed to be the supplier to those  
20      customers or is IP? And that was an issue raised by  
21      IP, it wasn't raised by M.J.M., so you got a  
22      limitation issue here besides that of the boundary



1 line.

2 EXAMINER ALBERS: Certainly.

3 And to some extent, when I talked about the boundary  
4 line, I meant to imply, at least, that who served who,  
5 in part, would perhaps depend upon the boundary line.

6 MR. TICE: Right. Right. Right.

7 MR. HILL: This is Greg Hill, on  
8 behalf of IP. I agree with the comment of the Hearing  
9 Examiner that the boundary line, obviously, is the  
10 most significant issue. I think the Co-op would admit  
11 that the boundary line is where -- the boundary line  
12 is not reflected in the service area agreement where  
13 they think it is, and so it becomes a question of what  
14 the boundary line was at the time that the Commission  
15 approved the service area agreement, and now they  
16 believe it's at a different location, but it's never  
17 been approved at that different location, or by the  
18 Commission, so I agree that it's the issue with the  
19 boundary line. The smaller customers are  
20 insignificant.

21 EXAMINER ALBERS: Well, just to  
22 be clear, I don't want my comments to be construed as

1       stating that the boundary line is the only  
2       determinate. I don't want to prejudge any arguments  
3       that might come up in this docket, or another docket  
4       for that matter.

5                               MR. TICE: Well, I think what  
6       M.J.M. would like preference to do or like authority  
7       to do in this case is go ahead and file its  
8       counterclaim in this proceeding. If the Examiner  
9       determines that it's more appropriate to dismiss IP's  
10      complaint in this case and that that be done in a  
11      separate docket, that is, M.J.M.'s counterclaim in a  
12      separate docket in this matter, then maybe we better  
13      brief the question of the right of IP to dismiss,  
14      voluntarily dismiss their complaint in this matter. I  
15      mean, my preference would be - and I think it would be  
16      cleaner if it were all handled in the same docket.  
17      The docket's been opened up. If IP is in fact allowed  
18      to dismiss their complaint, then the only complaint  
19      remaining, is, of course, M.J.M.'s countercomplaint,  
20      and M.J.M. does have the burden on the  
21      countercomplaint. That's true whether or not IP's  
22      complaint is there or not. Each of us bear the burden

1       on our respective complaints, burden of proof, that  
2       is, and that doesn't change whether it's a new docket  
3       or it's in this docket, so it just appears to me that  
4       leaving it in the same docket just gives a more  
5       complete picture of what's happened, but... I mean, I  
6       think if the Examiner wishes M.J.M. to brief the  
7       question of whether or not IP can voluntarily dismiss  
8       their complaint, then we will be happy to do so. In  
9       the meantime, we would like to have time to get our  
10      countercomplaint on file.

11                   EXAMINER ALBERS: I'm not sure  
12      that keeping this all in the same docket would  
13      necessarily provide a clearer picture since very  
14      little has happened in this docket so far, and you've  
15      indicated yourself, Mr. Tice, that there may be other  
16      customers beyond the 10 identified so far that could  
17      be affected; is that correct?

18                   MR. TICE: That's my  
19      understanding. There may be others, yes.

20                   EXAMINER ALBERS: And I presume  
21      that it would be your intention, whether you do so on  
22      a counterclaim or a new complaint, to specifically

1 identify the remaining customers?

2 MR. TICE: Well, I don't know.  
3 I've got to determine if there are, and whether or not  
4 it's necessary to bring those in.

5 EXAMINER ALBERS: Okay.

6 MR. TICE: I don't know at this  
7 point. I'm not prepared to commit to that.

8 EXAMINER ALBERS: I still think  
9 it may be more efficient to have M.J.M. initiate a  
10 second complaint docket if IP wants to dismiss this  
11 one, although, I'd certainly be willing to listen to  
12 any arguments on why this docket should be left open,  
13 and I'd be happy to set a briefing schedule today to  
14 address that. It sounds like you might be interested  
15 in that, Mr. Tice?

16 MR. TICE: Yes, I would be.

17 EXAMINER ALBERS: You may sway me  
18 in your briefs.

19 Why don't we go off the record then to  
20 discuss the schedule for that?

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1 (Whereupon at this point in  
2 the proceedings, an  
3 off-the-record discussion  
4 transpired.)

5 EXAMINER ALBERS: Back on the  
6 record.

7 We've determined dates for responses and  
8 replies to IP's motion to dismiss. M.J.M. will have a  
9 response filed by October 17th, and IP will have a  
10 reply filed by October 26th, and will e-mail a copy of  
11 that to me on that day, and we'll have another status  
12 hearing on October 27th at 1:30. Is there any other  
13 issues to address?

14 MR. TICE: I believe not.

15 MR. HILL: No, not on behalf of  
16 IP.

17 EXAMINER ALBERS: If nothing  
18 further then, we'll continue this matter to October  
19 27th at 1:30.

20 MR. HILL: Okay.

21 MR. TICE: Thank you.

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1                   (Whereupon the case was continued to  
2                   October 27, 2000, at 1:30 p.m., in  
3                   Springfield, Illinois.)

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